S.B.Civil Misc. Appeal No.1160/2004

CHITANYA KUMAR & ORS.

VS.

R.S.R.T.C.

DATE OF ORDER : - 9.8.2004

HON'BLE MR. PRAKASH TATIA,J.

Mr.Sandeep Saruparia, for the appellant.

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Heard learned counsel for the appellant.

This appeal is against the order dated 20th July, 2004 by which the first appellate court after setting aside the decree dated 11th July, 2003 of the trial court remanded the matter back to the trial court after framing an issue.

Learned counsel for the appellant vehemently submitted that in the trial court appellant very specifically pleaded that appellant is tenant in the premises and the defendant-respondent no.1 took a plea that appellant-plaintiff is not the tenant, but a licensee. The trial court framed the issue that whether the defendants are not entitled to dispossess the plaintiffs from the property in dispute without following the process of law and also framed issue that whether the defendant has legal right to increase the licence fees and change the terms and conditions of the licence and whether the defendant has right to invite tender for giving property. It is also submitted that in

view of the pleading, both the parties were fully aware that what was the issue involved and, therefore, the order of remand uncalled for. It is also submitted that the trial court itself gave liberty to the respondent landlord to evict the appellants from the premises by following process of law.

After going through the reasons given in the order impugned I found that the trial court has not framed the proper issue and it caused serious confusion even in the mind of the learned Judge of the trial court and this fact has been noticed by the first appellate court in its order in para no.13.

In view of the above reasons, I do not find that the order of the first appellate court is erroneous in law. Hence, I do not find any merit in this appeal and the same is hereby dismissed.

(Prakash Tatia), J.

c.p.goyal/-